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THE THIRTEENTH SESSION OF THE EXPERT MECHANISM ON THE RIGHT TO DEVELOPMENT

AGENDA ITEM 4 (b) (iii)

An interactive chapter-by-chapter discussion on the draft international covenant on the right to development

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Distinguished Chair,
Members of the Expert Mechanism,
Ladies and Gentlemen,

I am pleased to address you in my capacity as Chair-Rapporteur of the Intergovernmental Working Group on the Right to Development. I appreciate the opportunity to share this video message on the mandate, process and vision behind the draft international covenant on the right to development, which is the subject of your discussion today.

Efforts for a legally binding instrument on the right to development predate the actual mandate to elaborate it. An early example is the 1990 Global Consultation on the Right to Development as a Human Right. One of the suggestions made then was that "the United Nations elaborate and adopt a binding comprehensive convention on the right of peoples and every human being to development."

The proposal to elaborate a legally binding instrument gained momentum with the 1998 summit of the movement of non-aligned countries, held in Durban, where Heads of States or Government proposed that "consideration be given to the preparation of a Convention on the Right to Development as one of the important steps towards effective implementation of the right to development".

In 2003, at its 13th summit, held in Kuala Lumpur, the Non-Aligned Movement resolved that "the United Nations Commission on

Human Rights' Open-Ended Working Group on the Right to Development should continue to give priority to the operationalisation of this important right including, inter alia, elaboration of a Convention on the Right to Development."

In 2007, the Human Rights Council agreed on a programme of work of the Working Group that was to lead to raising the right to development to the same level as and on a par with all other human rights and fundamental freedoms, with the ultimate objective of elaborating a legally binding instrument.

It was finally in 2018 that the Human Rights Council requested the open-ended Intergovernmental Working Group on the Right to Development to consider the elaboration of a legally binding instrument on the right to development and requested me, as Chair of the Group, to draft a text, based on the discussions that would be held during the following session of the Working Group in 2019 and the resource material from previous Working Group sessions to serve as a basis for substantive negotiations on a draft legally binding instrument.

In 2019, the Council reiterated its request to me to submit a draft legally binding instrument to the Working Group. I requested the UN Human Rights Office (OHCHR), to provide me with requisite support. The OHCHR then recommended the establishment of a drafting group, to be composed of five recognized experts in the field of international law and with due respect to equitable gender and geographical

representation, with the objective to draft a legally binding instrument, including commentaries.

I selected the members of the drafting group upon recommendation of the OHCHR. They comprised Professor Mihir Kanade from India as its Chair and Rapporteur, as well as Professors Makane Mbengue from Senegal, the late Koen de Feyter from Belgium, Diane Desierto from the Philippines and Judge Margarette May Macaulay from Jamaica. Dr. Kanade was mandated with the preparation of a first draft of the treaty with detailed commentaries.

As Chair, I fully ensure the entire process was conducted through an open, transparent, consultative, and collaborative approach. Moreover, I advise the drafting group to rely as much as possible on agreed upon language and envision a text that garners the widest support.

Prior to commencing the drafting process, a detailed questionnaire was issued by the OHCHR to all stakeholders – States, regional groups, United Nations specialized agencies and other IGOs, NHRIs, NGOs, mandate holders of special procedures, and academics. Based on their inputs, and pursuant to deliberations within the drafting group, an initial draft was prepared along with detailed commentaries and shared with ten external experts for their opinions and suggestions. Thereafter, necessary revisions were made and the "zero draft" of the instrument and the accompanying commentaries were submitted by the

group to me. I subsequently reviewed and endorsed the zero draft, which was published in January 2020.

The Working Group considered a total of 3 iterations of the draft text, each time accompanied by negotiations in the Working Group, along with written inputs. Following a request by the Council, I submitted a final draft text to the Council in 2023 and recommended that the Council transmit the text to the General Assembly, which the Council did in September 2023, and the Assembly subsequently took note of this decision.

Regrettably, a group of States decided not to engage in the consideration of the draft treaty, except for making general statements in plenary meetings of the Working Group. Only during the final consideration did the EU submit written comments, and to the extent possible, these comments were taken into account. As Chair, I have responded to their concerns and views on several occasions.

I have since called upon Member States to adopt the draft text as soon as possible and suggested that the 40th anniversary of the adoption of the United Nations Declaration on the Right to Development later this year would provide an excellent opportunity to do so.

Opening the text for negotiations in the General Assembly risks delaying the adoption, diluting the text, or even derailing the process. While achieving consensus would be desirable, it is an undeniable fact that the opposition to the draft treaty by a few States is based on the

fundamental opposition to the very concept of a legally binding treaty on the right to development.

40 years after the adoption of this Declaration on the right to development, it is high time to lift the right to development to a legally binding instrument at par with the other human rights instruments, and to make progress in its realization for all peoples and for all individuals.

Thank you.

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